IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 7-9-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

WP No.3817 of 2007
and
MP Nos.1 and 2 of 2007

1.B & C Mills Staff Union
(Regd. No.2399)
rep. By its General Secretary
No.60, Krishnadoss Road
Chennai 600 012.
2.Madras Labour Union
(Regd. No.722)
rep. By its General Secretary
R.Audikesavalu
176, Strahans Road
Chennai 600 012. .. Petitioners

vs

1.Board for Industrial and Financial
Reconstruction
Jawahar Vyapar Bhawan
No.1, Tolstoy Marg, Janpath,
New Delhi 110 001.
2.M/s.Binny Ltd.,
rep. By its General Manager
- Pers. & HRD,
106, Armenian Street
Chennai 600 001. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the concerned records relating to the order No.18(4)/1/B-1/BIFR/MON/02 dt: 26.12.2006 of the first respondent in Case No.48/93 - M/s.Binny Limited read with the orders dated 4.8.2005 and 7.10.2005 of the 1st respondent in Case No.48/93 and to quash the same as being illegal and arbitrary and consequently direct the 1st respondent to pass orders in the petition dt: 11.12.2006 preferred by the petitioners to the 1st respondent within a time frame.

For Petitioners : Mr.N.G.R.Prasad
for M/s.Row and Reddy

For Respondents : Mr.A.Jenasenan for R2
No appearance for R1

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ORDER

Challenging an order of the first respondent namely the Board for Industrial and Financial Reconstruction (BIFR) dated 26.12.2006 read with the orders dated 4.8.2005 and 7.10.2005 in Case No.48/93, this writ petition has been brought forth by the petitioners Unions.

2.The Court heard the learned Counsel on either side and looked into the affidavit in support of the petition and also the counter affidavit filed by the second respondent.

3.The following would emerge as facts admitted:

The B & C Mills, a Unit of the second respondent, when it became a sick Company, had approached the first respondent BIFR in the year 1993 for rehabilitation scheme. In 1994, the first respondent framed a scheme for the revival of the second respondent. The scheme came to be tested before this Court. A Division Bench of this Court approved the same; but, the scheme failed due to the non-implementation. The second respondent M/s.Binny Ltd., approached the first respondent in the year 2000 to provide for another scheme for the revival of the Company. The second scheme also did not materialize due to the failure on the part of the promoters to infuse funds as framed in the sanctioned scheme. In the year 2002, the second respondent once again approached the first respondent for rehabilitation. An order was passed by the first respondent on 24.2.2003. But, the first respondent did not approve the draft scheme submitted by the second respondent. An appeal was filed before the appellate authority namely AAIFR, in Appeal No.83/2003 in Case No.48/93. The same was rejected on 9.5.2003. Then, the management preferred WP No.14856/2003 on the file of this Court. The same was disposed of on 24.9.2003 with a direction to the first respondent to sanction the scheme within the stipulated time. Accordingly, the first respondent by an order dated 22.10.2003, sanctioned the rehabilitation scheme for the second respondent, and it was also permitted to sell the properties at Madras. The second respondent obtained the reliefs to some extent. While the matter stood thus, the issues of the workmen remained unsettled. The petitioners Unions preferred a petition on 11.12.2006 before the first respondent seeking intervention and for appropriate relief. The first respondent sent a reply on 26.12.2006 stating that the second respondent Company had been discharged from the purview of BIFR on 7.10.2005 with certain directions, and in such circumstances, there is no question of representation that would arise, and hence, it was to be rejected, and accordingly, rejected. Aggrieved, the petitioners Unions have brought forth this writ petition before this Court.

4.Advancing his arguments on behalf of the petitioners, the learned Counsel Mr.N.G.R. Prasad would submit that the order of the first respondent in rejecting the petition was thoroughly arbitrary and unreasonable; that the first respondent has relied on certain proceedings on 4.8.2005 and 7.10.2005 for the purpose of rejecting the petition; that the petitioners Unions were not parties for either of the proceedings on 4.8.2005 or 7.10.2005. The order passed on 4.8.2005, discharging the second respondent from the purview of the first respondent was challenged before this Court by the workmen of the Engineering Unit of the second respondent in WP No.26104/2005; that this Court passed an order on 16.8.2005 whereby it granted an interim stay of the order dated 4.8.2005; that the writ petition was pending until 17.4.2006 when ultimately the

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workmen of the Engineering Unit settled the matter; that the writ petition was closed by the Division Bench in view of the settlement; that the second respondent had also preferred another writ petition against the order of the first respondent and also obtained interim stay; that under the circumstances, the first respondent could not have passed the order on 7.10.2005; that when the writ petition was pending before this Court, the said orders which were referred to by the first respondent for the purpose of rejecting the petition of the petitioners dated 11.12.2006, were made even without hearing the parties concerned; that further, there were number of writ petitions pending before this Court; that originally when the orders on those dates were challenged before this Court, the petitioners in the instant writ petition were not parties; that they were not even made as parties; that they were different Unions; that apart from that, when the orders were passed at that time, these petitioners were also not heard; that as regards the two orders that were referred to by the authority dated 4.8.2005 and 7.10.2005, in the order of the BIFR under challenge, these petitioners were neither parties nor heard; that further, while passing the order referred to therein, one of the main factors that was taken into consideration by the BIFR was that the properties were actually attached by the Indian Bank towards the loans advanced; that when the orders came to be passed on 7.10.2005 and even before that, on 19.9.2005, the entire attachment was not in force in view of the settlement reported by the parties before the Apex Court; that under the circumstances, all the properties were actually brought out of the Securitization Act; that as far as the BIFR was concerned, it has monitory powers; that in view of the order of this Court made in WP No.14856 of 2003, there was a scheme framed; that once the scheme was framed in respect of the sick Company under Sec.18(12) of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the BIFR is to monitor the same; but, in the instant case, it has not done so; that apart from that, once a petition was filed, even without hearing the petitioners concerned, it has rejected the same and has not even followed the principles of natural justice; that under the circumstances, it is a fit case, where the order of the BIFR has got to be quashed, and the writ petition be ordered.

5.The learned Counsel for the second respondent inter alia would submit that in the instant case, the rejection of the petition by the BIFR, the first respondent herein, was perfectly done for the simple reason that it was true that the B & C Mills was originally a sick Unit; that it was under BIFR proceedings; that once the entire payment has been made, all the properties were brought out; but, it came to be described as sick Unit; that it was not a sick Unit at all; that once it is not a sick Unit, then the BIFR had nothing to do with the present situation; that under the circumstances, B & C Mills stands actually as a Company; that further, the BIFR referred to in the impugned order two orders originally passed on 4.8.2005 and 7.10.2005; that this is in respect of the workers of B & C Mills, and thus, it would be binding upon these petitioners also; that now, the petitioners have come forward to state that they have got an independent entity, and therefore, it would not be binding on them; that they can neither say like that nor come forward to say that they were not heard; that once the orders passed were originally tested before this Court and orders have also been passed in view of the settlement made, while the orders were passed by the BIFR, it was also made clear that it could not further proceed in the matter, and they have also got the remedies before the appropriate forum; that it is not a case where the

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petitioners Unions are without remedy; that they have got all their remedies in the respective area; but, they have not availed so; that only they made a petition to the first respondent while the first respondent could not proceed with the matter; that if the first respondent was to proceed under the stated circumstances, the matter must be pending in the hands of the BIFR; but, in the instant case, originally, nothing was available in view of the orders passed originally on those two dates; that if to be so, the petition made before the BIFR itself, was vexatious; that even then, the BIFR has passed the order stating that originally, two orders were passed, and in view of those orders, the BIFR has nothing to further proceed with the matter, and thus, nothing was available in the hands of the BIFR; that under the circumstances, the BIFR could not entertain the petition, and there was no option for the BIFR except to reject the petition; and that accordingly, it has been rejected.

6.Added further, the learned Counsel that in the instant case, as regards the Unions what are now before the Court, there are no such Unions at all; that it is mentioned only for the namesake; that they are not even registered; that under the circumstances, the petition before the BIFR and the writ petition before this Court are vexatious; that in view of the settlement arrived at between the parties under Sec.12(3) of the Industrial Disputes Act, 1947, an order came to be passed on 17.4.2006; that if to be so, there is no question of further calling the industry as a sick company; that once the company cannot be shown under the purview of the BIFR, the BIFR could not further proceed with the matter; that accordingly, it has rejected the petition and rightly too, and under the circumstances, the writ petition has got to be dismissed.

7.The Court paid its anxious consideration on the submissions made. After doing so, this Court is of the considered opinion that the writ petition has got to be ordered for more reasons than one. The only grievance ventilated by the petitioners is that they made a petition before the first respondent on 11.12.2006. The petition was rejected outright by the first respondent by an order dated 26.12.2006. The order reads as follows:

> "I am directed to refer to your letter dated 11.12.06 to inform you that the company M/s Binny Ltd has been discharged from the purview of SICA/BIFR on 7.10.05 with certain directions. A copy of each of the orders dt 04.08.05 and 07.10.05 are enclosed for initiating necessary action as per the law."

8.Firstly, from the very reading of the order under challenge, it would be quite clear that not even an opportunity of being heard to these petitioners was afforded; but, the petition was rejected outright. On the first ground for not giving an opportunity to the petitioners two Unions, this Court is of the considered opinion that the principles of natural justice have been offended, and hence, without giving an opportunity the first respondent should not have rejected the petition. On that ground, it has got to be set aside.

9.Secondly, two earlier orders of the BIFR dated 4.8.2005 and 7.10.2005, are referred to in the impugned order. In the course of the order dated 7.10.2005, one of the main factors that was taken into consideration by the BIFR was that the entire immovable properties of the Company were actually under attachment for the loans advanced by the Indian Bank and they are covered under the Securitisation Act. But, the factual position, when the order came to be passed on 7.10.2005, was

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actually not so. From the available materials, it would be quite clear that the matter was actually pending on the file of the Apex Court, and there was a settlement that was reported on 19.9.2005 itself, in respect of the original attachment made. In view of the settlement reported on 19.9.2005 itself, the original attachment on the immovable properties of B & C Mills which was referred to by the BIFR in its order dated 7.10.2005, was actually not in force, and thus, it was one of the main factors which weighed in the mind of the BIFR while it passed the order on 7.10.2005. But, the order of attachment came to an end while a settlement was reported before the Apex Court on 19.9.2005. At this juncture, it is pertinent to point out that had an opportunity been given to the petitioners Unions, they would have brought to the notice of the BIFR this fact when an order came to be passed on 7.10.2005. The petitioners Unions came forward to state that they were not given an opportunity of being heard at the time when the order was passed on 7.10.2005. The factual position as noticed above is that the attachment came to an end when the settlement was reported before the Apex Court on 19.9.2005, and that was one of the main factors considered by the BIFR when it passed an order on 7.10.2005. This Court is of the view that an opportunity should have been given to the petitioners to put forth their case.

10.Thirdly, it is not in controversy that pursuant to an order of this Court, a scheme came to be framed in the year 2003, and this scheme was actually to be acted upon. When a scheme came to be framed pursuant to the orders of this Court, naturally under Sec.18(12) of SICA, the BIFR has got its powers and jurisdiction to monitor the same. Pursuant to the framing of the scheme, in order to see whether the terms therein are performed or not, the petitioners must be given an opportunity to put forth their case. Instead, the BIFR has rejected the petition outright even without affording an opportunity to the petitioners herein.

11.For all the above reasons, this Court is of the firm view that the order of the BIFR which is under challenge dated 26.12.2006, on the petition made by the petitioners on 11.12.2006, has got to be set aside, and accordingly, it is set aside. The first respondent is directed to give an opportunity to both sides to put forth their case, follow procedural formalities and pass suitable orders on merits as one warranted under law and circumstances also, within a period of three months herefrom. Accordingly, this writ petition is ordered. No costs. Consequently, connected MPs are closed.

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Asst.Registrar

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Sub Asst.Registrar

nsv/

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To:

1.Board for Industrial and Financial
Reconstruction
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+ 1 cc to Mr.A.Jenasenan Advocate SR.NO.65145
+ 1 cc to Mr.Row& Reddy Advocate SR.NO.56193

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